

Testimony of the Civil Justice Clinic, Quinnipiac University School of Law
In Support of HB 5390
Joint Committee on Judiciary
March 25, 2022

Dear Members of the Joint Committee on Judiciary:

We submit this testimony in support of HB 5390, An Act Repealing Statutory Provisions that Impose Liability on an Individual for Repayment of Costs Incurred When the Individual was Incarcerated. This bill would repeal Connecticut’s cost-of-incarceration lien statute, which allows the state to take up to 50% of inheritances and lawsuit proceeds from individuals who were incarcerated, and the entire estate of such individuals when they die (subject to narrow exclusions). Connecticut’s statute—which permits the state to collect for 20 years following a person’s release from prison—hinders reentry, impedes estate planning, perpetuates intergenerational poverty, disproportionately affects Black and Latinx residents, and is subject to challenges in the courts. Repealing Connecticut’s cost-of-incarceration statute would support the reentry efforts of formerly incarcerated people and have a long-term positive impact on the economic health of the State.

I. Current Law in Connecticut

Section 18-85a of the Connecticut General Statutes requires the Connecticut Department of Correction (“DOC”) to adopt regulations “concerning the assessment of inmates of correctional institutions or facilities for the costs of their incarceration.”¹ Further, the statute mandates that the State enforce claims against “each inmate for the costs of such inmate’s incarceration . . . for which the state has not been reimbursed.”²

A. Lawsuit Proceeds

When a person who owes the cost of his or her incarceration receives money from a lawsuit within 20 years of their release from prison, the state has a lien against the lawsuit proceeds in the amount of the cost of incarceration, or 50% of the proceeds received (after

¹ Conn. Gen. Stat. § 18-85a(a) (2021).

² *Id.* § 18-85a(b). Certain property is exempt from the state’s claim, including most property acquired after release. However, the state’s claim extends to post-release lottery winnings, inheritances and lawsuit proceeds in accordance with § 18-85b and § 18-85c, and funds from federal, state or municipal pension, annuity or insurance contracts as set forth in § 52-321a(b).

payment of expenses),³ whichever is less.⁴ The plaintiff's attorney is obligated to provide written notice of any settlement or judgment to the DOC and pay in accordance with the lien.⁵

B. Inheritances

When a person who owes the cost of incarceration receives an inheritance within 20 years of their release from prison, the state has a lien against the inheritance in the amount of their cost of incarceration, or 50% of the assets of the estate payable to such person, whichever is less.⁶ The probate court is required to accept notice of the lien from the DOC commissioner and the court must distribute the estate in accordance with the lien to the extent the inheritance has not already been distributed.

In addition, when a person who owes the cost of their incarceration dies within 20 years of their release from prison, the state can enforce a claim against their entire estate to repay the lien subject to "the extent that the amount which the surviving spouse, parent, or dependent children of the decedent would otherwise take from such estate is not entitled to their support."⁷ The State's claim has priority over "all unsecured claims against the estate," including repayment of public assistance, but not including certain other specified obligations.⁸

C. Cost and Collection

According to the most recent figures from the Department of Administrative Services (DAS), the cost of incarceration in Connecticut at \$249 per day (or \$90,885 per year).⁹

Funds collected under the cost-of-incarceration statute go into Connecticut's General Fund¹⁰ and account for merely 0.0003% of the State's annual budget.¹¹ Because the funds go into

³ See Conn. Gen. Stat. § 18-85b(a). The lien "shall have priority over all other claims, including any lien of the state for repayment of public assistance, except (1) attorney's fees for the cause of action, (2) expenses of suit, (3) costs of hospitalization connected with the cause of action by whomever paid over and above hospital insurance or other such benefits, and, for such period of hospitalization as was not paid for by the state, physicians' fees for services during any such period as are connected with the cause of action over and above medical insurance or other such benefits, (4) child support obligations pursuant to subsection (d) of section 17b-93, (5) restitution or payment of compensation to a crime victim ordered by a court of competent jurisdiction, and (6) payment of a civil judgment rendered in favor of a crime victim by a court of competent jurisdiction." Conn. Gen. Stat. § 18-85b(a).

⁴ *Id.* § 18-85b(b).

⁵ See Conn. Gen. Stat. § 18-85b(a) ("The state's lien shall constitute an irrevocable direction to the attorney for such person to pay the Commissioner of Correction or the commissioner's designee in accordance with its terms . . .").

⁶ Conn. Gen. Stat. § 18-85b(b).

⁷ Conn. Gen. Stat. § 18-85c.

⁸ *Id.* In particular, the state must allow the estate to retain (1) \$375 towards "final sickness" (medical bills related to cause of death); (2) funeral expenses up to \$1350 (per § 17b-84); (3) child support obligations; (4) restitution payment to crime victim; (5) payment of a civil judgment rendered in favor of a crime victim; and (6) certain administrative expenses (probate fees, taxes, etc.).

⁹ Meghan Friedmann, *Lawsuit: At 249 per day behind bars, CT levies 'unthinkable indebtedness' on inmates*, New Haven Register (Mar. 14, 2022), <https://www.nhregister.com/news/article/Lawsuit-At-249-per-day-behind-bars-CT-levies-17001892.php>.

¹⁰ See Dave Byrnes, *Federal lawsuit denounces Connecticut's prison debt law*, Courthouse News Service (Mar. 14, 2022), <https://www.courthousenews.com/federal-lawsuit-denounces-connecticuts-prison-debt-law/>.

¹¹ See Mumina Egal et al., *Opinion: Stop making CT prisoners pay for Incarceration*, CTPost (Mar. 18, 2022), <https://www.ctpost.com/opinion/article/Opinion-Stop-making-CT-prisoners-pay-for-17011003.php>.

the state's general fund, a full repeal of this statute would not affect a victim's restitution in any way.¹² The administrative costs required to collect these funds make incarceration liens an inefficient means of generating revenue.

II. Approaches of Other States

While many states enacted their "pay-to-stay" statutes during the 1990s, multiple states recently have passed reforms to eliminate these statutes. For example, in 2019, New Hampshire and Illinois eliminated their pay-to-stay statutes.¹³ Illinois' statute, like Connecticut's, targeted previously incarcerated individuals who had received a settlement or an inheritance.¹⁴ Advocates for the statute's repeal observed that the State was expending substantial resources trying to recover cost-of-incarceration charges.¹⁵ Illinois State Senator Robert Peters stated in support of repeal: "Pay-to-stay is morally wrong. These folks are already being punished for their crimes by being locked up. It's unconscionable that we would place them into indentured servitude upon their release."¹⁶

Furthermore, in 2021, Michigan's Washtenaw County forgave over half a million dollars in debt related to cost-of-incarceration fees owed by more than 31,000 people who were previously incarcerated at county facilities within the past eight years.¹⁷

III. Importance of Repealing Connecticut's Cost-of-Incarceration Statute

Connecticut's cost-of-incarceration statute burdens reentry, perpetuates intergenerational poverty, disproportionately impacts people of color, and is subject to challenge in the courts.

First, fines and fees associated with criminal prosecution thwart the goals of rehabilitation and reentry by creating and contributing to insurmountable cycles of debt, restricting economic mobility,¹⁸ and undercutting physical and mental health needs.¹⁹ When a person is released from prison, economic stability is necessary for successful reintegration into

¹² *Id.*

¹³ HB 518-FN (N.H. 2019); Pub. Act. 101-0235 (Ill. 2019). See Caitlin Andrews, 'Pay to stay' law charging prisoners for their incarceration faces repeal, Concord Monitor (Jan. 25, 2019), <https://www.concordmonitor.com/State-House-bill-remove-inmate-care-cost-statute-23000648>.

¹⁴ See Greg Bishop, *New Criminal Justice Laws Include Barring State from Suing for Cost of Incarceration*, Center Square Illinois (Dec. 15, 2019), https://www.thecentersquare.com/illinois/new-criminal-justice-laws-include-barring-state-from-suing-for-cost-of-incarceration/article_835221de-1dda-11ea-8323-1fa3cfb707e2.html.

¹⁵ *Id.*

¹⁶ State Senator Robert Peters, *Peters Ends "Pay to Stay"* (May 31, 2019), <https://www.senatorrobertpeters.com/news/press-releases/38-peters-ends-pay-to-stay>.

¹⁷ Angie Jackson, *Washtenaw County forgives \$509K in jail debt for more than 31,000 people*, Detroit Free Press (Feb. 4, 2021), <https://www.freep.com/story/news/local/michigan/2021/02/04/washtenaw-county-jail-debt/4388377001/>.

¹⁸ See Alicia Bannon et al., Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (Oct. 4, 2010), <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry>.

¹⁹ See Lauren-Brooke Eisen, Brennan Center for Justice, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause* (Jul. 31, 2014), <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate> (noting that people incarcerated will often forgo medical treatment and hygiene items due to the cost imposed on them).

society.²⁰ Connecticut's cost-of-incarceration statute forces formerly incarcerated people to carry the financial burden of their incarceration with them for 20 years after their release. This burden, combined with other obstacles people face when reintegrating into society after incarceration (such as securing employment and housing) makes reentry even more difficult.²¹

Second, the cost-of-incarceration statute disrupts estate planning and a family's ability to distribute or receive wealth from their next of kin, thus interfering with an individual's ability to help their children financially. The children of people affected by this statute have already suffered an enormous loss by having a parent incarcerated, and now that parent's ability to pass wealth onto them is also inhibited. Giving the state the ability to collect on inheritances contributes to intergenerational poverty and undermines the wishes and intentions of the deceased. With the cost-of-incarceration statute in place, receiving money from a deceased relative carries with it an additional cost beyond the emotional harm that comes with losing a loved one.

Third, Connecticut's cost-of-incarceration statute disproportionately impacts Black and Latinx residents of Connecticut. White non-Hispanic residents represent approximately two-thirds of the state's general population²² but make up only about 28% of the state's incarcerated population.²³ In contrast, Black and Latinx individuals make up more than 71% of Connecticut's prison but less than a third of Connecticut's general population. Due to the demographic composition of Connecticut's prison population, people of color are more likely to have their ability to pass on wealth to their children impeded by the cost-of-incarceration statute. The statute harms not only those targeted by liens, but also their children and larger family and social networks.

Fourth, Connecticut's cost-of-incarceration statute has been subject to challenges in the courts and we can expect more litigation in the future if the statute remains in place. In 2021, the U.S. Court of Appeals for the Second Circuit concluded that Connecticut's cost-of-incarceration statute conflicted with federal civil rights statutes when a lien was placed on a lawsuit judgment against a state defendant for violating a person's constitutional rights while incarcerated.²⁴ This month, the ACLU of Connecticut filed a federal lawsuit asserting that Connecticut's cost-of-incarceration liens are excessive fines that violate an individual's rights under the Eighth Amendment.²⁵

²⁰ Christopher Zoukis, Zoukis Consulting Group, *The Purpose of Prison and the Measuring Stick of Recidivism* (2014), <https://prisonerresource.com/the-purpose-of-prison-and-the-measuring-stick-of-recidivism/#:~:text=In%20a%20perfect%20world%2C%20prison,no%20longer%20engage%20in%20crime>.

²¹ Other barriers formerly incarcerated people face upon reentry include scant job opportunities, having little access to education, and being ineligible for public benefits, public housing, and student loans. See *Fact Sheet – Barriers to Successful Re-Entry of Formerly Incarcerated People*, Leadership Conference on Civil & Human Rights (Mar. 27, 2017), <http://civilrightsdocs.info/pdf/criminal-justice/Re-Entry-Fact-Sheet.pdf>.

²² See U.S. Census Bureau, *QuickFacts Connecticut*, <https://www.census.gov/quickfacts/CT>.

²³ See DOC, *Average Confined Inmate Population and Legal Status* (Mar. 1, 2022), <https://portal.ct.gov/-/media/DOC/Pdf/MonthlyStat/Stat03012022.pdf>.

²⁴ *Williams v. Marinelli*, 987 F.3d 188 (2d Cir. 2021).

²⁵ *Beatty v. Lamont*, No. 3:22-cv-00380-JAM, 2022 WL 782429 (D. Conn. Mar. 14, 2022); see Christine Dempsy, *Prisoner and Former Inmate File Federal Lawsuit Against State Over Prison Debt*, Hartford Current (Mar. 14, 2022).

Finally, Connecticut's prison population has decreased by more than 50% since 2008,²⁶ thus reducing the need for Connecticut to utilize cost-of-incarceration liens.

For all of these reasons, we urge the General Assembly to repeal Connecticut's cost-of-incarceration statute.

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²⁶ See DOC, *Average Confined Inmate Population and Legal Status 1* (Mar. 1, 2022), <https://portal.ct.gov/-/media/DOC/Pdf/MonthlyStat/Stat03012022.pdf> (stating as of March 1, 2022, there were 9,774 people incarcerated by the State of Connecticut); see also DOC, *Department of Correction Incarcerated Population Drops Below 9,000 - a 30-year low* (Mar. 22, 2021), <https://portal.ct.gov/-/media/DOC/Pdf/PressRelease/Press-Releases-2021/DOC-PRESS-RELEASE-re-Incarcerated-Population-Below-9000-032221.pdf>